UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1116
16 August 1995

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-seventh session

SUMMARY RECORD OF THE 1116th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 11 August 1995, at 10 a.m.

Chairman: Mr. GARVALOV

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GE.95-18336 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Thirteenth periodic report of Nigeria (CERD/C/263/Add.3, CERD/C/283) (continued)

1. At the invitation of the Chairman, Mr. Azikiwe, Mrs. Dawodu-Williams, Mr. Fasehun, Mr. Gwam, Mr. Kobani and Mr. Yadudu (Nigeria) took seats at the Committee table.

2. Mr. SHAHI welcomed the presence of the Nigerian delegation, which indicated its serious attitude towards the dialogue with the Committee. He endorsed the Country Rapporteur's observation that Nigeria's record of reporting showed a lack of continuity and expressed the hope that the next periodic report would answer all questions raised, thereby providing the Committee with a clearer picture of how the provisions of the Convention were being implemented. When assessing the situation in Nigeria, the Committee must bear in mind the size of the population, which comprised more than 250 ethnic groups. Such a situation rendered full compliance with the Convention extremely difficult and finding ways of ensuring equitable treatment for all those groups, in accordance with article 5, became an almost superhuman task. The fact that Nigeria remained a federal State was indeed a great achievement: a high level of statesmanship and education among the population was required for the central Government to hold firm against the various movements operating throughout the country. Furthermore, credit was due to Nigeria for its leading role in international efforts to combat apartheid.

3. The Committee would welcome more information on the announcement to be made on 1 October 1995 regarding Nigeria's transition towards democratic rule, referred to by the delegation in its introductory statement. With the restoration of democracy, steps would presumably be taken to redress any human rights violations committed under military rule.

4. Referring to paragrapns 14 and 15 of the report (CERD/C/263/Add.3), he noted with satisfaction that section 39 (1) of the Nigerian Constitution went some way towards implementing the provisions of article 3 of the Convention. None the less it had not been made clear whether the Convention, like other human rights instruments, had been incorporated in domestic law. In connection with article 4 of the Convention, he concurred with the view that supplementary legislation was required to ensure fuller compliance with its provisions. He would welcome more information on the steps being taken in connection with the general overhauling of Nigerian legislation, mentioned in paragraph 16 of the report. And in view of the statement in paragraph 17, he inquired whether there was any legislation, other than section 39 (1) of the Constitution, which provided protection against incitement to racial discrimination.

5. The Nigerian delegation had assured the Committee that on the whole the rights enshrined in article 5 of the Convention were guaranteed under the present regime, although some restrictions had been imposed on the right to freedom of expression. He hoped that, following the announcement to be made in October 1995 regarding the transition towards democratic rule, such restrictions could be lifted. As to the statement that many Nigerians sought redress before the courts whenever their rights were violated, he would have welcomed more information, including details of the verdicts handed down in cases of alleged violations on ethnic and religious grounds.

6. The current situation in Ogoniland was most distressing and came within the purview of the Convention. The Federal Government must make an effort to remedy the situation and, if possible, facilitate the release of all detainees held solely for the non-violent expression of their political beliefs, as well as those persons subjected to arbitrary detention. Human rights monitors and independent observers should be allowed access to Ogoniland without a military escort. Moreover, steps must be taken to bring to an end the impunity of members of the Nigerian security forces implicated in violent human rights abuses. Lastly, provision should be made for the relief and rehabilitation of residents in the oil-producing areas and compensation awarded to those persons who had suffered losses as a result of action taken by the security forces.

7. Mr. YUTZIS said that he had reached the conclusion that Nigeria had not yet fully recovered from the recent oil crisis. Crude oil was one of its main sources of revenue and, as in other nations with a high level of poverty, its economy and thus society as a whole had been seriously affected by fluctuating oil prices.

8. As to demographic information, in a tribal-based society with so many different ethnic groups pulling in different directions, the Federal Government's efforts to forge national unity were understandable. However, he was not certain that the type of government that emerged from a coup d'état was the best means of building consensus, which was so vital in multi-ethnic societies. The cold war had been brought to an end on account of the political and economic interests at stake. In the new world order established thereafter there were two categories of nations: some controlled by force and others run on the basis of consensus. Unfortunately, it was difficult to achieve consensus where grave economic conditions prevailed. The report by the Nigerian delegation pointed to a conflict between the need for consensus, on the one hand, and the dictates of essentially economic interests, on the other. Such a situation might well have led to the suspension of constitutional guarantees and a form of government that did not respect democratic principles. It was to be hoped that Nigeria's transition towards democracy would be achieved as swiftly as possible, not least for the sake of fuller compliance with the Convention.

9. He would be interested to know the views of the delegation on the glaring discrepancy between information on the situation in Nigeria contained in the report and that provided by other reliable sources, including Human Rights Watch, which pointed to serious human rights abuses against the civilian population and, in particular, the Ogoni.

10. In that connection, the image of the Nigerian police force portrayed in document CERD/C/283 and the relevant statement by the Nigerian delegation contrasted sharply with other reports available. He questioned the statement in paragraph 1 of document CERD/C/283 to the effect that teaching the promotion and protection of human rights was included in the Police College curriculum. Perhaps the Nigerian delegation could provide more information on that curriculum and on how it was structured. He doubted whether it dealt in depth with topics such as the theory of conflicts, arbitration and mediation. Contrary to the stance taken by most States parties and their reports, when conflicts broke out the various factions involved operated on the basis of recourse to extremes, which precluded the possibility of mediation. He stressed the need for serious reflection on the role of mediation in resolving conflicts. For historical reasons the Africans were skilled mediators, so surely their security forces could be trained in respect for human rights on the basis of specific criteria which reconciled security, on the one hand, and the rights of the individual, on the other. Much had been said on the prevention of conflicts, but it seemed that when faced with serious situations, such as the case of Nigeria, the Committee was incapable of taking appropriate action. A change in attitude and working methods was thus imperative.

11. There was a tremendous discrepancy between what the Nigerian report said about the behaviour of the security forces towards the civilian population and what appeared in other reports by such prestigious non-governmental organizations as Amnesty International or the "Report on Human Rights" of the United States Department of State. He did not say that the Committee should accept them unquestioningly, but the gap was nevertheless very wide. He hoped that the Nigerian delegation would be able to shed further light on the question.

12. He would like to endorse the point made by Mr. Wolfrum. The importance of land as a symbol, and the sacred nature often attributed to it, were universally recognized. When land was taken over by economic interests which did not necessarily take into account the meaning of the land to the people living on it, when it was not simply purchased but seized and environmentally destroyed, that destruction touched something still more sacred in the human order, namely, the people who inhabited the land. The situation in Ogoniland bore some of those characteristics.

13. Mr. CHIGOVERA said that Nigeria's commitment to implementing the Convention could not be doubted. Nevertheless, he had two questions on which he hoped the delegation would be able to shed some light. The first related to equality of enjoyment of the rights stipulated under article 5, namely, equal treatment before the courts and other tribunals in Nigeria. Paragraph 19 of document CERD/C/263/Add.3 and paragraph 3 of document CERD/C/283 both referred to the various rights contained in sections 30-40 of the Nigerian Constitution, which included the right to equal treatment before the courts and all other organs administering justice. Some of the reports from non-governmental organizations, however, suggested that that provision of the Constitution might well not have applied in the case of Mr. Ken Saro-Wiwa. According to those reports, special arrangements had been made for dealing with the case, which was one of allegations of murder and

incitement to murder, in the form of the appointment of a Civil Disturbances Special Tribunal, instead of the normal system whereby it was the High Court which had jurisdiction to try such matters. That difference in treatment appeared to be inconsistent with the principle of equality before the law.

14. The case had arisen against a background of allegations of discrimination made by the Ogoni people. Moreover, the circumstances which had given rise to the trial had also arisen from situations which the Ogoni people perceived as being part of their struggle against discrimination by the system. The organizations which had expressed concern included the Minority Rights Group, the Bar Human Rights Committee of England and Wales, and the Law Society of England and Wales, which had dispatched an eminent lawyer to attend the proceedings. That lawyer had pointed out the absence of any procedure for appeal, as well as other irregularities, such as the holding of simultaneous trials. There had also been allegations by two of the principal witnesses against Mr. Saro-Wiwa that they had been bribed to give their testimony. Those allegations suggested that the entire trial proceedings, including the handling of witnesses, were directed towards the achievement of a pre-determined outcome as part of the continued persecution of the Ogoni people. He would welcome the delegation's comments on what appeared to be very serious allegations against the Nigerian Government.

15. Secondly, in view of the situation in Ogoniland and the events described in the reports he had mentioned, he wondered whether the statement in paragraph 17 of the report, that Nigeria did not have racial problems and that no organization, activity, public authority or public institution, national or local, was permitted to promote or incite racial discrimination, could be accurate. The reports he had mentioned, as well as another prepared by an organization purporting to represent the Ogoni people, the Unrepresented People's Organization, were agreed in stating that the major form taken by discrimination was the lack of consideration by the Government for the interests of the Ogoni people and, in particular, the introduction of an oil-based economy on their land. They claimed that no consideration had been given to the environmental effects, which had destroyed their once-fertile soil and wrecked their farming and fishing industries and that the people had received no benefit from the oil industry. In introducing the report, the head of the Nigerian delegation had spoken of the multiplier effect of the inflow of foreign capital in terms of job opportunities and the transfer of technology, suggesting that those would offset any adverse effects. The other reports, however, stated that the Ogoni people were discriminated against with respect to employment in the oil-based industry.

16. The reports submitted by Nigeria suggested that section 39 of the Nigerian Constitution substantially complied with its obligations under article 4 of the Convention. He would point out, however, that the article called specifically for the criminalization of the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and all acts of violence or incitement to such acts against any race or group of persons. It also called upon States parties to declare illegal and prohibit

racist organizations. He asked whether Nigeria, in view of its declared policy of opposing discrimination, was considering taking steps to enact specific legislation in order to implement those provisions of the Convention.

17. Mr. SHERIFIS said that he wished to emphasize the significance he attached to the Committee's dialogue with Nigeria and the importance of impressing on that State party the need for full implementation of the Convention. Nigeria's implementation to date had been analysed in depth by the Country Rapporteur and other members of the Committee had raised further questions. He awaited with interest the Nigerian delegation's responses. At the same time, he understood and sympathized with the difficulties faced by so large a country containing so many ethnic groups. He warmly welcomed the delegation's statement that the Government's policy was to de-emphasize and defuse ethnic and religious tensions through ethnic integration and religious harmony.

18. He particularly wished to acknowledge the leading role played by Nigeria over the years in United Nations action against apartheid. For many decades, that country had led the struggle against an evil now finally eliminated.

19. He noted the Country Rapporteur's observation that, in view of the statement made by the Nigerian representative at the time of the adoption of the Convention in 1965 that the right of individual petition was the most important part of the draft Convention since it was the individual who suffered from discrimination, it might have been hoped that Nigeria would make a declaration under article 14 of the Convention. He would join Mr. van Boven in endorsing that observation. The Nigerian delegation would perhaps wish to take note of it and forward it to the Government. It might also take into account the reference to the amendments for the funding of the Committee and suggest that the relevant procedures should be initiated.

20. Mr. ABOUL-NASR said that one element was lacking in the Nigerian report which he hoped the delegation would be able to provide or include in the next report. A number of Committee members had referred to Nigeria's past accomplishments at the international level. He would be interested to learn of its current international activities. He knew that Nigeria was making an effort to provide assistance in many areas in Africa, particularly with regard to the solution of conflicts. It played an important role in the Organization of African Unity and in the United Nations through its membership of the Security Council. There was a Nigerian presence in Liberia and also in Bosnia and Herzegovina. The report, however, failed to draw attention to what the country was currently doing at the international level to honour its commitment to combat racial discrimination.

The meeting was suspended at 11.25 a.m. and resumed at noon.

21. Mr. AZIKIWE (Nigeria) said that his Government would welcome constructive and well-meaning suggestions on how to improve the implementation of the Convention. Nigeria was geographically and ethnically diverse, and solutions to its problems should be pertinent to the particular situation that prevailed in Nigeria, and not just stock responses to problems of racial discrimination in general.

22. Most Nigerians could once again go about the peaceful pursuit of their business without fear or intimidation, thanks to the resolute actions of the Federal Government to save the country from sliding rapidly towards civil conflict. However, the truth of the situation in Nigeria was a far cry from the allegations of a police state sometimes levelled against the Administration. Nigeria was participating in the worldwide process of political democratization and economic liberalization and would continue to promote the principles of the dignity and equality of all human beings. The 1979 Constitution guaranteed that the 250 ethnic groups' diverse cultures and languages were reflected in all socio-economic structures and appointments.

23. With regard to the question on revenue distribution, the Federal Government received 48.25 per cent, state governments 24 per cent and local government councils 20 per cent. Funds were also set aside to mitigate the effects of ecological degradation and develop oil and mineral-producing areas. The trend was for the Federal Government's share of revenue to decrease while that of states and local governments increased.

24. On the question about the environment and ethnicity, pollution in areas where hydrocarbon was produced was unavoidable. However, statutory fines for environmental damage had been introduced to try to minimize the destruction caused. The Government, through the Federal Environmental Protection Agency and OMPADEC, was trying to clean up oil-polluted areas. However, those efforts were being undermined by the wilful destruction of pipelines by some militant residents of those areas, who had politicized the environmental issue and taken the law into their own hands to further their political programme. The Ogoni people were not being singled out for persecution; in fact, the majority of the Ogonis were law-abiding citizens who were loyal to the Federal Government.

25. With regard to the Movement for the Survival of Ogoni People (MOSOP) and the Ogoni situation in general, it was clear that the true picture had been greatly distorted. The allegation that about 60 women and children had been detained and tortured by the security forces in Ogoniland was completely groundless, as was that relating to a massacre of 50 people by the Nigerian army. No officials or representatives of any organization, national or international, had been prevented from visiting Ogoniland. If anything, they were encouraged to see the situation for themselves. However, most of them, especially Miss Pennington of Amnesty International, had chosen not to venture out to investigate what was going on and had then returned home and issued statements that bore no relationship to the truth.

26. Since 1993, the issue in Ogoniland had been one of law and order. A group headed by Mr. Saro-Wiwa had taken the law into its own hands, hijacking the originally peace-loving and constitutionally-minded MOSOP and using it as a vehicle for murder, arson and vandalism. No Government could stand idly by and watch a section of its population sow chaos. His Government's actions had been necessary to restore law and order to Ogoniland and prevent renewed killings and vandalism.

27. With regard to the alleged arrest of MOSOP members, it was not true that they had been arrested on the grounds of membership of the organization. Those arrested, including Mr. Baton Miite, had been detained for consistently trying to pervert the course of justice by suborning witnesses at the Ogoni Civil Disturbances Judicial Tribunal. It was patently untrue that the so-called headquarters of MOSOP had been raided and sealed off, since the premises had been vacated by their occupants shortly after the murder of three prominent Ogoni leaders by MOSOP in May 1994.

28. Turning to the question of the non-payment of teachers' wages in Ogoniland, he said that the irregular payment of remuneration and sporadic industrial action by teachers were not peculiar to Ogoniland. Schools had been functioning in the region, as in other parts of Rivers State.

29. Ogoniland had three local governments out of a total of 24 in Rivers State. The 400,000 Ogonis accounted for 10 per cent of the State's 4 million inhabitants. Unlike the figures quoted in the Committee, Ogoniland produced only 6 per cent of the entire oil production of Rivers State.

30. Mr. YADUDU (Nigeria) said, in reply to the question on Nigeria's tribunals, that it had not adopted the jury system as in English common law. Instead, all cases, both civil and criminal, were tried by an ordinary court or tribunal comprising one judge or a panel of judges.

31. On the question why Nigeria tried people accused of participating in civil ethnic or religious disturbances before special tribunals, as in the case of Mr. Saro-Wiwa, he said that the precedent for trials of that nature dated back to 1987. Their establishment had been prompted by the level of damage and the nature of the crimes committed in the north of the country. The tribunals were headed by a serving or retired judge from the highest courts in the land, with the assistance of other legally-trained personnel. To remove the appearance of bias or any conflict of interest, the members of the tribunal were always from outside the area and state to which the case related.

32. In reply to the question why Nigeria had ouster clauses that excluded the jurisdiction of the courts in certain cases, he said that such clauses were a feature of every military regime. The Nigerian Constitution recognized that certain political questions should not be dealt with in the courts. It stated that, for example, if a Governor or President should be accused of violating the laws of the land, proceedings to impeach him or her should be instigated by a panel set up by the National Assembly in accordance with the provisions of the Constitution.

33. The respect judicial tribunals and the courts commanded and their efficiency were due to the openness of trials, the right of the defendant to choose his or her own lawyer, and the fact that the presiding judge was a lawyer or at least someone with legal training. All tribunals without exception enjoyed those features, including the tribunal dealing with the case of Mr. Saro-Wiwa, which was also being monitored by the national and international press.

34. With regard to the question on why certain newspapers had been prohibited, he said that the press had more freedom in Nigeria than anywhere else in Africa. There were some 60 newspapers in Nigeria. Ten of them were run by the Government and the rest were in private hands. Three newspapers had been banned by the authorities for irresponsible reporting and inciting unrest.

35. As to the question on the criteria followed in the creation of states, he explained that ethnic and religious considerations were sometimes uppermost, but in other cases had no relevance whatsoever. Other factors included self-determination or numerical equilibrium between the north and south of the country.

36. On political associations, he stated that many such organizations had sprung up recently and, with the impending elections, would have an opportunity to transform themselves into political parties.

37. On the question on the 1979 Constitution, he said that the Nigerian military leadership had always abided by the rule that, in the event of a coup d'état, only certain aspects of the Constitution would be suspended. Civil rights, including guarantees of basic human rights such as the right to life, to dignity of the human person, to personal liberty, to a fair hearing, to private family life, to freedom of thought, conscience and religion, to freedom of expression and the press, to peaceful assembly and association, to freedom of movement and to freedom from discrimination, always remained in force. The high courts were empowered to ensure respect for those rights. An individual was free to take legal steps to ensure his enjoyment of those rights if he felt that they had been violated or that there was a threat of violation.

38. Case law on the enforcement of rights was boundless. Only three weeks previously, a Nigerian lawyer who had been prevented from attending a conference abroad by an over-zealous security official had succeeded in having the decision overruled by the courts. Under the last civilian regime, the courts had ruled in favour of the return to Nigeria of a well-known opposition politician of Chadian descent who had been expelled to Chad by the ruling party.

39. With regard to public accountability, the Constitution had established a Public Complaints Committee and a Code of Conduct Bureau, both of which were still operating and had authority to enforce their decisions. For example, an elected governor who was accused of making a false declaration of assets on taking the oath of office could be investigated and tried by a constitutional tribunal. The Public Complaints Committee dealt with allegations of unfair treatment of members of the public by civil servants.

40. Mrs. DAWODU-WILLIAMS (Nigeria) said that Nigeria was currently engaged in a comprehensive reform of its legislation. The Federal Government had set up a committee to review and reform the Criminal Code. The reform of section 52 (d), which had been of particular concern to the Committee at its August 1993 session from the point of view of compliance with article 4 of the Convention, had gone even further inasmuch as aspects thereof had been

declared unconstitutional and unenforceable. She assured the Committee that it would be informed of the results of the review and reform procedure.

41. Compliance with the Constitution was a principle vigorously upheld by the State high courts, the Federal Court of Appeal and the Supreme Court. In a case concerning the seizure of passports, the courts had ruled that citizens had the right to own passports in order to exercise their right to freedom of movement, which was guaranteed under the Constitution.

42. The Public Complaints Committee had wide powers to deal with grievances concerning both public and private enterprises and employers. Adverse publicity in such cases also had an important influence on the behaviour of offenders.

43. The country was working towards ethnic integration and religious harmony and was firmly opposed to all forms of racial discrimination, as reflected by the provisions of section 39 of the Constitution.

44. Mr. AZIKIWE (Nigeria) said that his delegation would welcome all suggestions from the Committee aimed at helping to solve Nigeria's problems. If any questions had been left unanswered, they would be covered in the next periodic report.

45. Mr. van BOVEN said that he was worried by the delegation's contention that the information at the Committee's disposal, particularly regarding Ogoniland, was misleading. That was a serious problem for the members of the Committee, which screened the information it received in order to ensure that it was credible.

46. He could not fully credit the delegation's claim that the operation of the special tribunal was fully in accordance with the requirements of justice and the provisions of the Convention, particularly article 5, paragraph (a), which required equal treatment before the tribunals and all other organs administering justice. He further understood that the tribunal's judgements were not subject to review by a higher court.

47. Mr. de GOUTTES noted that the delegation had adopted a political rather than a legal approach in its replies to the Committee's questions, tending to reject all criticism, particularly that based on information received from non-governmental organizations. It was a type of approach better suited to more political bodies such as the Commission on Human Rights.

48. When States established special tribunals, they were usually motivated by a desire to proceed with increased severity against certain categories of people or certain types of offences. The judges who participated in such tribunals were not always selected on the basis of strictly professional criteria. He doubted whether special tribunals, which often reflected government mistrust of the civil courts and of ordinary magistrates, were compatible with the rule of law and he had similar doubts concerning the ouster clauses that deprived the courts of competence in certain areas. He asked whether the Government intended, as part of the current reform process, to abolish the special tribunals and ouster clauses.

49. Mr. ABOUL-NASR said that he wished to correct the impression left by the remarks of Mr. van Boven and Mr. de Gouttes. Article 9 of the Convention stated that the Committee's reports and recommendations were to be based on the examination of the reports and information received from the States parties. There was no reference to information from non-governmental organizations. When the Convention had been drafted, the overwhelming majority of States Members of the United Nations had been against the idea of relying on such information.

50. He was not against using information from a wide variety of sources but the Committee must exercise great caution lest it be misled by bodies pursuing a particular agenda and financed by questionable sources. If some members of the Committee persisted in referring to sources of information that were alien to the Convention and contrary to the rules of procedure, he would not hesitate to intervene.

51. Mr. WOLFRUM suggested that the development of movements along ethnic lines might reflect a certain dissatisfaction in the population. Was the Government aware of that possibility and, if so, was it looking into the matter with a view to adopting preventive measures?

52. Mr. AHMADU said that he wholeheartedly supported Mr. Aboul-Nasr's observation regarding non-governmental organizations. One such organization had, for example, stated that 90 per cent of Nigeria's oil exports came from Ogoniland, when the correct figure was 6.5 per cent.

53. The special tribunal had been established pursuant to a clause in the 1979 Constitution. He pointed out that a governor had been removed through the operation of the tribunal.

54. Mr. BANTON (Country Rapporteur) said he believed there had been some movement on the part of the reporting State towards accepting that the Convention was not concerned exclusively with race, but also with factors that flowed from differences of ethnic origin. The reporting process enabled States to look at what a great variety of government institutions were doing to ensure coordination in their implementation of the Convention. The presentation of Nigeria's reports could be improved in some respects. For example, it was not enough simply to state that racial discrimination was excluded by the provisions of section 39 of the Constitution. Committee members must be persuaded that the provisions were being implemented in practice. More should be done to ensure compliance with articles 2, 4, 5, 6 and 7 of the Convention.

55. Nothing had been said in reply to his own comments on what he took to be the effects of Decree No. 12 on the powers of the High Court. He had been interested to hear that there was a policy of selecting judges who were not from areas involved in any ethnic dispute they would be called upon to try.

56. He failed to understand why the Kafanchan precedent should have been applied in the Saro-Wiwa case. Moreover, the representative of Nigeria had said that Mr. Saro-Wiwa was responsible for murders. A statement by a government representative that a person was guilty while his trial was in progress would, in his view, prejudice a fair trial.

57. He feared that the tendency to lay undue stress on the issue of law and order would hamper the process of reconciliation.

58. The CHAIRMAN said he was gratified by the assurance that the questions left unanswered by the delegation would be covered in the next periodic report and he was also encouraged to hear that Nigeria welcomed the Committee's suggestions. He trusted that it would comply scrupulously with the provisions of article 9 of the Convention regarding the date of submission of the next report.

59. Mr. Azikiwe, Mrs. Dawodu-Williams, Mr. Fasehun, Mr. Gwam, Mr. Kobani and Mr. Yadudu (Nigeria) withdrew.

The meeting rose at 1.15 p.m.